

LABOUR DEPARTMENT

The 7th March, 1995

No. 14/13/87-6 Lab./307.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Gagan Fabtex (P) Ltd., *versus* Ikaramuddin, son of Mohd. Issak.

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 5/90

between

THE MANAGEMENT OF M/S GAGAN FABTEX (P) LTD., PLOT NO. 59-A, SECTOR-25,
FARIDABAD

versus

THE WORKMAN NAMELY SH. IKARAMUDDIN, S/O MOHD. ISSAK, VILLAGE MADAL
PUR, TEHSIL BALLABGARH, DISTRICT FARIDABAD, C/O SHRI AMAR SINGH SHARMA,
LABOUR UNION, OFFICE, S.S.I. PLOT NO. 1K/14, N.I.T., FARIDABAD.

Present:

Shri Amar Singh Sharma, for the workman.

Shri Jagbir Bhadana, for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this Court for adjudication,—*vide* Haryana Government Endorsement No. 3831—36 dated the 29th January, 1990:—

Whether the termination of services of Shri Ikaramuddin is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was employed by the management on 1st April 1988 as a helper on permanent job and his last drawn salary was Rs. 625 p. m. His services were terminated on 29th June, 1989 illegally without issuing any charge sheet or holding enquiry. He is thus, entitled to be reinstated into service with continuity in service and full back wages.

3. The management submitted written statement dated 4th January 1993 stating therein that the workman was never appointed by them and as such there has been no relationship employer and employee between the parties. The reference made by the Government is bad in law and the workman is not entitled to any relief.

4. The workman submitted rejoinder dated 17th February 1993 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties the following issues were framed :—

- (1) Whether no relationship of employer and employee exists between the parties ? If so, to what effect ?
- (2) As per terms of reference.
- (3) Relief.

6. Both the parties have led evidence.

7. I have heard the authorised representatives of both the parties and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issues Nos. 1. & 2 :

8. Both these issues are interlinked and as such are discussed together.

9. The management has examined only one witness MW-1 Jagdish and he deposed that he had been working in the respondent establishment since its start in the year, 1992. He also produced copy of registration certificate dated 14th July, 1993, Ex. M-1 through which it was registered as small scale unit, copy of certificate of registration issued under the Central Sales Tax, dated 20th February, 1992, Ex. M-2 and copy of certificate of registration issued by the Sales Tax Authority, Faridabad, dated 15th October, 1992, Ex. M-3.

10. On the other hand, the workman has examined himself on oath and he deposed that he was appointed by the management in the year, 1989 on monthly wages of Rs. 600. His services were terminated after 1½ years despite the fact that his work was satisfactory. He was not paid retrenchment compensation. He also produced certificate Ex. M-1. In cross examination he clarified that he was appointed in the factory on 1st June, 1989.

11. On the basis of aforesaid evidence, it has been submitted on behalf of the management that it stands proved from the statement of the witness as well as from the registration certificate Ex. M-1 to Ex. M-3 that the factory of the management had started functioning in the year, 1992 and as such the question of appointment of the workman as helper in the year, 1988 did not arise. Consequently, the workman is not entitled to any relief.

12. In reply, it has been submitted on behalf of the workman that it is clearly mentioned in the certificate dated 21st May, 1989, Ex. W-1 that the workman was appointed on 21st April, 1988 by the management as helper. This certificate Ex. W-1 was issued by Manish Bhardwaj, Proprietor of the factory and his signatures available on it tally with his signatures available on the written statement. It is thus, established that the workman had rendered service for a continuous period of more than 240 days with the management prior to the termination of his services. The management did not pay retrenchment compensation to the workman envisaged under Section 25-F of the Act. Resultantly, the termination of services of the workman by the management is illegal and unjustified and he is entitled to be reinstated into service with continuity in service and full back wages.

13. The workman has himself demolished the case set up by him in the pleadings by firstly stating in the first sentence of his examination-in-Chief that he was appointed in the year, 1989 and then clarifying in the first line of his cross-examination that he was appointed on 1st June, 1989. This position also contradicts the position indicated in the certificate Ex. W-1 produced by him because this certificate was issued on 21st May, 1989 as mentioned below the signatures of the person issuing the certificate. Apart from this, it is noticed that the certificate Ex. W-1 bears some erasure of date at the top where the date was to be mentioned. The comparison of alleged signatures of Manish Bhardwaj appearing on the certificate Ex. M-1 with his signature available on the written statement also creates doubt that the two signatures tally with each other. In these circumstances, it cannot be accepted on the basis of evidence led by the workman that he had been in the employment of the management w.e.f. 1st April, 1988 to 29th June, 1989. In result, it is found that there has been no relationship of employer and employee between the parties. The question of termination of services of the workman by the management does not arise. Issues No. 1 and 2 are thus, decided in favour of the management and against the workman.

Issue No. 3 :

14. In view of my findings on issues No. 1 and 2 above, it is held that the workman had not been in the employment of the management and as such the question of termination of his services did not arise. Consequently, the workman is not entitled to any relief. The award is passed accordingly.

The 9th February, 1995.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 202, dated the 9th February, 1995.

A copy, with three spare copies, is forwarded to the Financial Commissioner & Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.